

## **REMARKS**

### **Status of the Application**

Claims 1, 3, 5-9, 12-16 and 18-24 are pending in the application. Claims 1, 3, 5, 9, 13-16, 18 and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Beyer et al. (U.S. Patent 4,305,803). Claims 6 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803) in view of Ohtsuki et al. (U.S. Patent 6,296,748). Claims 7 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803) in view of Nishizawa et al. (U.S. Patent 4,795,544). Claims 8, 21 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803) in view of Kawatsu (U.S. Patent 5,897,766). Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803). Claim 24 is allowed.

By this Amendment, Applicants are amending claims 1, 9 and 22.

### **Drawings**

Applicant thanks the Examiner for indicating that the drawings filed on August 30, 2007 are accepted.

### **Allowable Subject Matter**

Applicants thank the Examiner for indicating that claim 24 is allowed.

**Examiner's Response to Arguments**

On page 12 of the instant office action, the Examiner indicates that the rejections of claims 1-23 under 35 U.S.C. § 112, second paragraph has been withdrawn, but notes a typographical error in the argument presented on page 15 of the Amendment filed August 30, 2007. Specifically, page 15 states "Electrode 15 ... is not in communication with the atmosphere of the gas under measurement." Applicants note that this sentence should have read "Electrode 17 ... is not in communication with the atmosphere of the gas under measurement."

**Statement of Substance of Interview**

Applicants conducted an interview with the new Examiner for the instant application, Examiner Kaj Olsen on February 5, 2008. During the interview, the anticipation rejection of claim 1 over Beyer was discussed. Applicants requested clarification as to the Examiner's interpretation of the term "a gas return passage extending to the front end side" recited in claim 1. Further, Applicants proposed amending independent claims 1, 9 and 22 to further define the direction of the "front end side." The Examiner agreed that further defining the "front end side" would make the rejection over Beyer unsustainable. Alternatively, the Examiner indicated that further defining the direction of the gas return passage would make the rejection over Beyer unsustainable. During discussion of the proposed amendments, the Examiner agreed that the rejection of claim 12 was inappropriate, and that claim 12 is allowable over Beyer.

**Claim Rejections - 35 U.S.C. § 102**

*Claims 1, 3, 5, 9, 13-16, 18 and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Beyer et al. (U.S. Patent 4,305,803).*

Claim 1, as amended, recites, “a gas return passage for returning the gas drawn to the second electrode to the atmosphere of the gas under measurement, said gas return passage extending in a direction from the second electrode to the first electrode.” The Examiner alleges that Beyer discloses all of the elements of claim 1. Applicants respectfully disagree.

During an Examiner interview conducted February 5, 2008, the Examiner conceded that Beyer does not disclose that a gas return passage that extends in a direction from the second electrode toward the first electrode. More specifically, col. 4, lines 27-30 of Beyer indicates that a communication opening may exist, but fails to disclose *an explicit location for such an opening* outside of the opening being located within tube 11. However, with the opening being within tube 11, the opening cannot extend in a direction from the second electrode toward the first electrode. As such, Breyer cannot anticipate the gas return passage recited in claim 1. Thus, claim 1 is patentable over the applied art.

Claims 9 and 22 recite similar limitations to claim 1, and are patentable for reasons analogous to those presented with respect to claim 1. Claims 13-16 and 18 are patentable at least by virtue of their dependency from claim 1.

**Claim Rejections - 35 U.S.C. § 103**

*Claims 6 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803) in view of Ohtsuki et al. (U.S. Patent 6,296,748).*

Claims 6 and 19 are dependent from claims 1 and 9, respectively. Because Beyer fails to disclose all of the elements of claims 1 and 9, and because Ohtsuki fails to cure the deficient disclosure of Beyer, claims 6 and 19 are patentable over the applied art.

*Claims 7 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803) in view of Nishizawa et al. (U.S. Patent 4,795,544).*

Claims 7 and 20 are dependent from claims 1 and 9, respectively. Because Beyer fails to disclose all of the elements of claims 1 and 9, and because Nishizawa fails to cure the deficient disclosure of Beyer, claims 7 and 20 are patentable over the applied art.

*Claims 8, 21 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803) in view of Kawatsu (U.S. Patent 5,897,766).*

Claims 8, 21 and 23 are dependent from claims 1, 9 and 22, respectively. Because Beyer fails to disclose all of the elements of claims 1, 9 and 22, and because Kawatsu fails to cure the deficient disclosure of Beyer, claims 8, 21 and 23 are patentable over the applied art.

*Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Beyer et al. (U.S. Patent 4,305,803).*

Claim 12 is dependent from claim 9. Because Beyer fails to disclose all of the elements of claim 9, claim 12 is patentable over the applied art. Further, as noted above in the Statement of Substance of Interview, the Examiner conceded that claim 12 cannot be rendered obvious by Beyer. Thus, again, claim 12 is patentable over the applied art.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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